

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

AMERICAN STEEL, INC.

Employer

and

Case 5-RC-15692

IRON WORKERS' DISTRICT COUNCIL OF
THE MID-ATLANTIC STATES/LOCAL UNION 79

Petitioner

DECISION AND DIRECTION OF ELECTION

This issue in this proceeding is whether the petitioned-for unit, specifically the inclusion of helpers with ironworker foremen and ironworkers, is an appropriate unit for purposes of collective bargaining.

The Petitioner seeks to represent all full-time and regular part-time ironworkers, ironworker foremen, and helpers of the Employer.¹ The Petitioner argues that helpers properly may be included in the unit with ironworker foremen and ironworkers because they share a close and substantial community of interest. In this regard, Petitioner asserts that helpers work side-by side in the field with the ironworker foremen and ironworkers, work the same hours, share the same benefits, share common supervision, and on occasion have performed tasks predominately done by ironworkers.

The Employer argues that the petitioned-for unit does not constitute an appropriate unit. Specifically, the Employer maintains that only ironworkers and ironworker foremen comprise an appropriate unit for collective bargaining, and thus would exclude helpers on the basis that they do not share a community of interest with the other petitioned-for employees. The Employer does *not* contend the petitioned-for unit otherwise is not appropriate, or that any other employees should be included in the unit.

¹ At hearing, the Petitioner stated its willingness to proceed to an election in any unit found appropriate. The Petitioner and the Employer stipulated that crane operators, mechanics, shop fabricators, office clerical employees, guards and supervisors should be excluded from the unit. The petitioned-for unit consists of approximately 21 employees, which includes 18 ironworkers and ironworker foremen, and 3 helpers. There is no relevant history of collective bargaining for any of the employer's employees at the location involved herein.

I have carefully considered the evidence and arguments presented by the parties at the hearing and in their briefs regarding this issue. As discussed below, I conclude that the petitioned-for unit is an appropriate unit for purposes of collective bargaining.

The Employer presented two witnesses at hearing: Benjamin Galloway, field supervisor; and Adam Benson, ironworker foreman. The Petitioner presented three witnesses: Eliseo Cardona, ironworker; Shawn Lindley, ironworker; and Jonathan Marsan Sr., union organizer.

Background

The Employer, a Virginia corporation, is engaged in the fabrication and erection of structural and miscellaneous steel. The Employer fabricates steel at its shop located at 3322 Chesapeake Boulevard, Norfolk, Virginia.² The fabricated steel is then erected in the field. Field supervisors, ironworker foremen, ironworkers, and helpers are employed in the field and work on the approximately 6 to 10 jobs that are ongoing simultaneously. At the time of the hearing, the Employer had jobs in Williamsburg, Virginia Beach, Suffolk, Petersburg, Newport News, and Hampton, Virginia.

Employer's Job Requirements for Field Positions

Applicants for welding/ironworker positions must have welding certifications. For ironworker positions other than welders, however, the Employer does not require any special certifications or degrees. Individuals applying for ironworker positions must have, however, some degree of knowledge and experience in steel erection. Similarly, although the Employer does not require any specialized degree for ironworker foremen, it requires that the applicants have established knowledge in ironwork and organizational skills.

For helper positions, the Employer does not require any training, licensing, experience, or other specialized skills. In fact, the three helpers specific to this case, Christopher Moore, Michael Bell, and Christopher Pickett, did not have any experience in ironwork prior to their hire dates of December 2003, February 2004, and March 2004, respectively.

The Field Operation

At the beginning of the day, ironworker foremen, ironworkers, and helpers travel together to the various worksites via work trucks. Sporadically through the day, field supervisor Benjamin Galloway, visits each job site to monitor progress and supervise the work of the ironworker foremen, ironworkers, and helpers. In the field, the foreman review and interpret drawings from the shop that describe the manner in which the steel beams and materials must be erected at the job site. The ironworker foremen then

² The Employer also employs shop employees at its Norfolk, Virginia facility. Neither the Petitioner nor the Employer is seeking to include shop employees in the unit.

instruct the ironworkers and helpers accordingly throughout the day. In addition to instructing workers with respect to placement of steel and other tasks necessary for the job, ironworker foremen will often themselves perform hands-on ironwork.

The ironworkers' duties and tasks typically include rigging, connecting, fastening, cutting, and bolting steel beams, as well as performing various welding tasks. The ironworkers on site are divided into two distinct categories: (1) ironworkers who work primarily with structural steel parts, such as columns, beams, decking; and (2) ironworkers who work primarily with miscellaneous steel parts, such as stairs, handrails, and framing. The ironworkers who work with structural steel perform more bolting tasks, and the ironworkers who work with the miscellaneous steel parts often perform more welding, grinding, torching, and cutting of steel.

Helpers in the field generally assist the ironworker foremen and ironworkers on both structural and miscellaneous steel projects. Helpers are commonly referred to as "gofers," because they "go" get materials, tools, equipment, and other items from the work trucks needed on site. Helpers also hold and steady rails for the ironworker or foreman to weld, cut, or bolt to a structure. Helpers also retrieve ladders from work trucks and set them up on site, hook up welding lines and torches, and perform touch-up painting jobs on welded steel. Helpers mainly remain on the ground readying equipment and tools, while ironworker foremen and ironworkers work on top of structures above the ground. When a helper is not present on site, an ironworker will perform these miscellaneous "gofer" tasks.

In erecting steel, all ironworkers and ironworker foremen use the same tools and equipment, such as cranes, lifts, roustabouts (hoisting devices), spud wrenches, rope, ladders, lasers, crowbars, turnbuckles, acetylene torches, levels, block and tackle, cables, chain saw, tool belts, hammers, drift bull pins, and crescent wrenches. Helpers also come in contact with the same tools as they identify, retrieve, and deliver the various tools to the crews, and at times set them up for use. Although helpers generally do not have the skill to use certain ironwork tools in their special capacities, the ironworker foremen and/or ironworkers who they assist may instruct them on how to use a particular item. Ironworker foremen and ironworkers utilize the same safety equipment like harnesses and beamers. Ironworker foremen, ironworkers, and helpers alike wear hard hats in the field.

Although the record evidence demonstrates that helpers predominately assist the crew as "gofers" by retrieving materials and equipment, there is also evidence that the helpers have performed, on occasion, some ironwork tasks. For example, ironworker Lindley testified that he observed helper Chris Moore rig beams of steel on a job in Newport News within 1 to 2 months after Moore was hired. On the same job, Lindley specifically advised Moore to burn and cut materials with an acetylene torch. Moore obliged and cut steel and trimmed decking for Lindley. Thus, over a course of a few days on the job, Moore executed tasks performed predominately by ironworkers.

Progression from Helper to Ironworker Position

It is undisputed that helpers may advance to a journeyman ironworker with the Employer, but first must spend time in the field learning and observing tasks and responsibilities associated with ironwork. The Employer does not utilize any sort of formal apprenticeship program or system that would establish a definite line of progression from the helper position to a journeyman ironworker position. Rather, the record reveals that the Employer makes its decisions regarding the progression of a worker from helper to ironworker, based on its individual assessment of the helper. Specifically, Employer witness and field supervisor, Joseph Galloway, testified that a helper who shows interest and dedication to learning the work might progress to the journeyman ironworker position.

One example of a helper who advanced to an ironworker position in a fairly short amount of time is Eliseo Cardona.³ Eliseo was hired by the Employer as a helper in February 2003, and worked approximately five months in this capacity on jobs involving both structural and miscellaneous steel work. As a helper, Cardona was primarily a “gofer” to the ironworkers and ironworker foremen, and was paid \$8.00 per hour. Cardona then ceased working for the Employer for four months to frame houses, a task unrelated to duties he performed at the Employer.

Cardona applied again for work with the Employer in the fall of 2003. The Employer hired Cardona as an ironworker on or about November 13, 2003, at \$9.00 per hour. There is no evidence, or claim, that Cardona had additional certification, licensing, or experience in the field of ironwork upon his rehire, nor had he attended any apprenticeship program during his four-month hiatus from the Employer. Nevertheless, upon his return, Cardona was hired as an ironworker and has since burned, welded, and connected iron on various jobsites.⁴

Wage, Benefits, and Hours for Ironworker Foremen, Ironworkers, and Helpers

Ironworker foremen are paid an average of \$19.00 per hour. Ironworkers are paid an average of \$16.00 per hour, although Eliseo Cardona, a recently hired ironworker who had previously been employed as a helper, is paid approximately \$9.00 per hour. The hourly wage of helpers is \$8.00 per hour.

Ironworker foremen, ironworkers, and helpers alike enjoy the same fringe benefits such as paid holidays, 401(k) plan participation, medical insurance, and vacation leave. The employees are eligible to participate in these benefits after working approximately

³ Both Petitioner and Employer stipulated that Cardona is included in the petitioned-for unit as an ironworker.

⁴ In its post-hearing brief, the Employer explained: “Helpers are not denied the opportunity to learn, but because of the sporadic need for helpers, their limited utility and high turnover, there has not been the desire to train them. It can be argued that Cardona is the exception, but he is a re-hire who showed a desire to stay with the company and advance.”

30-60 days for the Employer. Similarly, ironworker foremen, ironworkers, and helpers work a Monday through Friday schedule, from 7:00 a.m. to 3:30 p.m.

Analysis: Community of Interest Issue

Section 9(b) of the Act states the Board “shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof...” The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be “appropriate.” *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Parsons Investment Co.*, 152 NLRB 192 fn. 1 (1965); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enfd. 190 F.2d 576 (7th Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger’s Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-3 (4th Cir. 1962), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10th Cir. 1962).

Community of duties and interests of the employees involved is the major determinant. *Swift Co.*, 129 NLRB 1391 (1960). If there is a sufficient community of interest among employees, the fact that groups of employees have different duties and responsibilities does not make a combination of those employees inappropriate. *Berea Publishing Co.*, 140 NLRB 516, 518 (1963). Relevant considerations include: (a) similarity in the scale and manner of determining earnings; (b) common supervision (c) similarity of employee functions/type of work performed; (d) qualifications, skills and training of employees; (e) interchange and contact among employees; (f) integration of production processes; and (g) employment benefits, hours of work, and other terms and conditions of employment. *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962).

Applying the factors above to the facts developed on the record in this case, I find that the employees in the petitioned-for unit do share a sufficient community of interest to constitute an appropriate unit for purposes of collective bargaining.

Common supervision

It is undisputed that the Employer’s field supervisors supervise ironworker foremen, ironworkers, and helpers alike. Field supervisor Benjamin Galloway testified to having interviewed and hired most if not all of the employees working in the field. Galloway also testified that he visits the various job sites, directs the work, staffs the jobs, and monitors the progress of the ironworker foremen, ironworkers, and helpers.

Contact among employees, benefits, and hours of work

There is almost constant daily contact among the Employer's ironworker foremen, ironworkers, and helpers in the field. Testimony from Petitioner and Employer witnesses, alike, support the fact that the helpers work directly with the ironworkers and ironworker foremen throughout the workday at the same job sites. The ironworker foremen and ironworkers deal directly with the helpers, advising when they require a ladder, tool or other piece of equipment, or need other assistance. The helper obliges, working side-by-side, delivering material, holding steel in place, and otherwise observing work. Helpers also travel in the same work trucks with ironworker foremen and ironworkers to and from the various job sites. In addition, witnesses for both parties testified that helpers are eligible for the same employment benefits enjoyed by ironworker foremen and ironworkers, and work the same hours.

Similarity of employee functions/skills and training of employees

Although ironworker foremen and ironworkers generally bring more skill and knowledge to the erection of steel and thus perform more skilled work, the record supports the fact that helpers may perform occasional ironworker duties, as well as being able to advance fairly quickly to ironworker status. Working side-by-side with ironworkers and ironworker foremen enables the helpers to learn skills and specialized use of the tools and equipment. As mentioned above, Christopher Moore, after approximately one to two months of work in the field, was actively involved in rigging beams of steel and using the acetylene torch to burn and cut materials on a job in Newport News. Specifically, Shawn Lindley, ironworker, observed Moore rigging steel beams by attaching and leveling them with nylon straps. Moore also was cutting steel with a torch, as requested by Lindley.

Particularly notable is that Eliseo Cardona, who after working only five months in the field as a helper, was rehired in the more skilled classification of ironworker in the fall of 2003. Despite his lack of additional certification, licensing or experience in the field of ironwork, Cardona was rehired as an ironworker. Cardona had not attended any apprenticeship program during his four-month leave from the Employer, but nevertheless was employed in an ironworker capacity.

Although a helper, like Christopher Moore, may spend more of his time performing "gofer-style" tasks and only occasionally perform ironwork, that factor alone does not outweigh the fact this classification otherwise shares a sufficient community of interest with ironworker foremen and ironworkers with respect to similar working conditions, benefits, common supervision, and frequent, daily contact. *Berea Publishing Co.*, 140 NLRB 516, 518 (1963) (the fact that groups of employees have different duties and responsibilities does not make a combination of those employees in a unit inappropriate).

Based on the foregoing, I find that the petitioned-for unit, including helpers, is an appropriate unit, and constitutes "a readily identifiable and homogeneous group with a

community of interests separate and apart from the other employees.” *R. B. Butler, Inc.*, 160 NLRB 1595, 1600 (1966).⁵

Eligibility Formula

The Board held in *Steiny & Co.*, 308 NLRB 1323 (1992), that the *Daniel* formula is applicable in all construction industry elections, unless the parties stipulate to the contrary. See also *Signet Testing Laboratories*, 330 NLRB 1 (1999). Here, the Employer’s unit employees are engaged in the construction industry, and the parties did not stipulate that the *Daniel/Steiny* formula should not be applied. Accordingly, I find that the *Daniel/Steiny* formula, as set forth below, is the appropriate eligibility formula to be applied in this case.

The *Daniel/Steiny* formula to determine eligibility of employees in the construction industry provides that, in addition to those eligible to vote under the traditional standards, laid-off unit employees are eligible to vote in an election if they were employed by the Employer for 30 working days or more within the 12 months preceding the eligibility date for the election, or if they have had some employment by the Employer in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date. Of those eligible under this formula, any employees who quit voluntarily or had been terminated for cause prior to the completion of the last job for which they were employed are excluded and disqualified as eligible voters. *Daniel Construction Co.*, 133 NLRB 264, 267 (1961), modified 167 NLRB 1078 (1967), reaffirmed and further modified in *Steiny & Co.*, 308 NLRB 1323 (1992), overruling *S.K. Whitty & Co.*, 304 NLRB 776 (1991).

⁵ For purposes of the above analysis, I have assumed that the petitioned-for unit is not a true “craft” unit, as the Board defines that term. See *Brown & Root Braun*, 310 NLRB 632 (1993). Whether the petitioned-for unit is properly regarded as a “craft” unit was not litigated by the parties, and would not, in any event, affect the result reached herein. Analyzing this case as a one involving a “craft” unit in the construction industry, it is clear that the helpers at issue properly are included in the unit. Indeed, case law is clear that “[a] craft unit is one consisting of a distinct and homogeneous group of skilled journeymen craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees” *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994) (emphasis added), citing *Phoenician*, 308 NLRB 826 (1992). Accord: *CCI Construction Co.*, 326 NLRB 1319, 1323 (1998); *Schaus Roofing*, 323 NLRB 781 (1997); see also *Southern Paperboard Corp.*, 112 NLRB 302, 306 (1955). Cases in which helpers were not included in petitioned-for craft units are clearly distinguishable from the instant case, as they involved circumstances where the helpers were not regularly assigned to work with the particular craft at issue, and were not in a line of progression to any of the craft positions. See *American Cyanamid Co.*, 110 NLRB 89, 94 (1954); *Hughes Tool Co.*, 88 NLRB 1039 (1950). Also clearly distinguishable is *Cans, Inc.*, 100 NLRB 1445 (1952), cited in the Employer’s post-hearing brief. *Cans* was a craft severance case, in which the petitioner sought to sever two groups of employees from the existing, overall production and maintenance unit. The Board permitted severance involving certain classifications, but refused to permit a craft severance election among millwrights and millwright helpers on the basis that employees in those classifications did not utilize craft skills. In fact, perhaps more relevant to the inquiry before me is the Board’s *inclusion* in that case of a “helpers” among the craft electricians. *Id.* at 1449.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. Petitioner, Ironworkers' District Council of the Mid-Atlantic States/Local Union 79, a labor organization as defined in Section 2(5) of the Act, claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated that American Steel, Inc., is a corporation of the State of Virginia, with an office and place of business in Norfolk, Virginia. It is engaged in the fabrication and erection of structural and miscellaneous steel. During the preceding 12 months, a representative period, the Employer has purchased and received at its Norfolk, Virginia facility, products, goods and materials valued in excess of \$50,000 directly from points located outside the State of Virginia.

6. I find, the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time ironworker foremen, ironworkers, and helpers employed by the Employer at its Norfolk, Virginia facility, excluding crane operators, mechanics, shop fabricators, office clerical employees, guards and supervisors as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **IRON WORKERS' DISTRICT COUNCIL OF THE MID-ATLANTIC STATES/LOCAL UNION 79**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **April 7, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **APRIL 14, 2004**. The request may not be filed by facsimile.



/s/Wayne R. Gold

Wayne R. Gold, Regional Director
National Labor Relations Board
Region 5

Dated: **March 31, 2004**